



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 3, 2021

Mr. Kevin D. Cullen  
Attorney for the Victoria County Sheriff's Office  
Cullen, Carsner, Seerden & Cullen, LLP  
P.O. Box 2938  
Victoria, Texas 77902-2938

OR2021-30686

Dear Mr. Cullen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 914265.

The Victoria County Sheriff's Office (the "sheriff's office"), which you represent, received three requests from the same requestor for 1) three categories of information pertaining to a specified incident and 2) e-mails by sheriff's office employees containing three specified keywords during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the present request because the e-mails are not within the time period specified by the requestor. This ruling does not address the public availability of the non-responsive information, which we have indicated, and the sheriff's office need not release it in response to this request.<sup>1</sup>

Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the

---

<sup>1</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The sheriff's office states, and provides documentation showing, a lawsuit styled *Harris v. Marr*, Case No. 6:21-CV-39, was pending against the sheriff's office in the United States District Court for the Southern District of Texas, Victoria Division, when it received the instant request for information. You state the responsive information is related to the pending lawsuit. Based on your representations, the submitted documentation, and our review of the submitted information, we find litigation was pending when the sheriff's office received this request for information, and most of the responsive information is related to the pending litigation for the purposes of section 552.103. Therefore, except for the information we have marked for release, the sheriff's office may withhold the responsive information under section 552.103(a) of the Government Code. However, we find the information we have marked for release is not related to the pending litigation and may not be withheld under section 552.103.

Further, the information at issue involves alleged criminal activity. Information normally found on the front page of an offense or incident report is generally considered public. See *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by Houston Chronicle). This office has determined section 552.103 does not except from release basic information about a crime. See Open Records Decision No. 362 at 2 (1983). Thus, with the exception of basic information and the information we

have marked for release, the city may withhold the responsive information under section 552.103(a) of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we conclude the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>3</sup> *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the sheriff’s office must withhold the e-mail addresses in the remaining responsive information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

In summary, with the exception of basic information and the information we have marked for release, which must be released, the city may withhold the responsive information under section 552.103(a) of the Government Code. The sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff’s office must withhold the e-mail addresses in the remaining responsive information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

---

<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>3</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/jm

Ref: ID# 914265

Enc. Submitted documents

c: Requestor  
(w/o enclosures)